

Submission

No 6

**INQUIRY INTO RECOMMENDATIONS OF THE ICAC
REGARDING ASPECTS OF THE CODE OF CONDUCT FOR
MEMBERS, THE INTEREST DISCLOSURE REGIME AND A
PARLIAMENTARY INVESTIGATOR**

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Dear Stephen

Thank you for the letter of 22 January 2014 from your two chairmen inviting a submission to your joint inquiry into recommendations of the Independent Commission Against Corruption. They also wrote to the Lord Speaker, Baroness D'Souza, and the chairman of the Sub-Committee on Lords' Conduct, Lord Brown of Eaton-under-Heywood. This is a collective reply on behalf of us three.

I have had sight of the reply sent to you by the House of Lords Commissioner for Standards, Paul Kernaghan. I agree with the points made in his letter and do not repeat them here.

The post of Commissioner for Standards in the House of Lords was created in 2010, following a comprehensive review of the Code of Conduct and the process of investigating complaints. This review was prompted by high-profile allegations that certain members were prepared to table amendments in return for payment,¹ but it took place against the background of an increasing number of complaints of breach. Until 2010 complaints were considered by the Sub-Committee on Lords' Interests (as it was then called), which investigated members and reached a finding of whether the Code had been breached. It was felt that a Commissioner independent of the House was required in order to secure public confidence in the integrity and independence of investigations.

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¹ In the event, two members were found to have breached the Code and were suspended from the service of the House. See Committee for Privileges, *The Conduct of Lord Moonie, Lord Snape, Lord Truscott and Lord Taylor of Blackburn* (2nd report, 2008–09, HL Paper 88).

That said, the House ensured that a balance was struck between the necessary independence of the investigatory process and the ability of the House to set and enforce its own standards. This was considered important in a self-regulating chamber, as the House of Lords is. Thus, although the Commissioner reaches a finding as to whether a member has breached the Code, any sanction is for the Sub-Committee on Lords' Conduct to recommend. When a member is found by the Commissioner to have breached the Code he or she can appeal to the Committee for Privileges and Conduct against both the finding of breach and the proposed sanction. A further appeal lies to the House itself. In the case of the most serious sanction currently available—suspension from the service of the House—the House itself must agree a motion to suspend a member.

Since the post of Commissioner was created his workload has steadily increased. In the financial year April 2010- March 2011 he investigated two complaints. In 2011-12 he investigated six. In 2012-13 he investigated 10. These investigations are in addition to complaints which he does not investigate (because, for example, they fall outside his remit or no *prima facie* evidence of breach is provided) and to the significant number of letters he receives about other matters. It appears to have been the case that, as the Commissioner has become more widely known, so the number of complaints has increased. It is perhaps notable that a number of complainants are other parliamentarians.

It may be worth setting out how parliamentary privilege applies to the Commissioner's investigations. From the point at which he begins an investigation all evidence and correspondence relating directly to it is covered by parliamentary privilege and must remain confidential unless and until published by the Committee for Privileges and Conduct. It is a contempt to disclose evidence without the committee's agreement or to attempt to obstruct an investigation. Although there have been no major difficulties with the application of privilege in this area since 2010, having these provisions in place helps to safeguard the necessary confidentiality of the Commissioner's investigations. They also ensure that the member under investigation and witnesses can communicate frankly with him.

Finally, I think it is fair to say that, although there was some resistance to the proposal to create a Commissioner, since 2010 the post has come to be accepted by the House and, it seems, the public. There is no suggestion of returning to the previous system of solely internal investigations. Moreover, the Commissioner's findings have generally been accepted; to date no appeal against one of his findings has succeeded.

I wish you success with your inquiry. If I can be of any further assistance please do not hesitate to make contact.

Yours sincerely

David Beamish
Clerk of the Parliaments